

STATE OF MICHIGAN
COURT OF APPEALS

DARYL L. S. CANJAR,

Plaintiff-Appellee,

v

GREGORY A. CANJAR,

Defendant-Appellant.

UNPUBLISHED

September 25, 2003

No. 241387

Lapeer Circuit Court

LC No. 00-029232-DM

Before: Meter, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Defendant Gregory Canjar appeals by right from orders denying his motion to set aside a consent judgment of divorce, for relief from judgment and for a new trial. We affirm.

Plaintiff filed a complaint for divorce and sought custody, spousal support and an equitable property settlement. The issues of property settlement and child support were heatedly disputed. Following extensive pretrial motions and discovery, the parties began negotiations on the day set for trial. When the negotiations failed, the trial was adjourned to the next available trial date, about five months later. On that scheduled trial date, the parties began the trial and then resumed negotiations, ultimately placing a settlement agreement on the record. Defendant filed a motion for relief from judgment and a new trial on the ground that the consent judgment was entered under duress and coercion resulting from the court's conduct throughout the course of the proceedings below which defendant claims was biased, oppressive and coercive against him and his counsel.

Defendant raises a number of vague arguments on appeal. However, at oral argument, defendant's counsel indicated that the sole issue on this appeal is the claim that the consent judgment of divorce was reached under duress stemming from the alleged misconduct of the trial court. We review a trial court's decision whether to set aside a consent judgment for an abuse of discretion. *Harvey v Harvey*, 257 Mich App 278, 283; ___ NW2d ___ (2003). The trial court's finding concerning the validity of the parties' consent to a settlement agreement will not be overturned absent a finding of an abuse of discretion. *Keyser v Keyser*, 182 Mich App 268, 270; 451 NW2d 587 (1990). An abuse of discretion exists when the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992) (citation omitted).

For a consent judgment to become effective, the parties must in fact consent. *Howard v Howard*, 134 Mich App 391, 397; 352 NW2d 280 (1984). The seminal question is whether the consent was valid. As this Court reasoned:

On the other hand, the property settlement here was fully and completely agreed to by the parties on the record in open court. As such, it partook of the nature of a binding contract between the parties. Under such circumstances, we do not reopen the proceeding and attempt to discover whether the parties' agreed-to property settlement is exactly the same as a court would have arrived at if the case had been fully tried on the merits. Settlements, duly arrived at by the parties and placed on the record in open court in the presence of counsel, are entitled to a high degree of finality. [*Tinkle v Tinkle*, 106 Mich App 423, 428; 308 NW2d 241 (1981).]

Property divisions reached by the consent of the parties, and finalized in writing or on the record, cannot be modified by the court and cannot be set aside absent fraud, duress, mutual mistake or severe stress. *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 778 (1999). "Duress exists when one, by the unlawful act of another, is induced to make a contract or perform some act under circumstances which deprive him of the exercise of free will." *Apter v Joffo*, 32 Mich App 411, 416; 189 NW2d 7 (1971), quoting *Knight v Brown*, 137 Mich 396, 398; 100 NW 602 (1904), quoting *Hackley v Headley*, 45 Mich 569, 574; 8 NW 511 (1881). Moreover, "[d]uress will not prevail to invalidate a contract entered into with full knowledge of all the facts, with ample time and opportunity for investigation, consideration, consultation, and reflection." *Id.*, quoting *Payne v Cavanaugh*, 292 Mich 305, 308; 290 NW 807 (1940). A change of heart is normally insufficient to justify the setting aside of a settlement agreement. *Groulx v Carlson*, 176 Mich App 484, 492; 440 NW2d 644 (1989).

Defendant's pernicious allegations regarding the trial court's conduct during the proceedings below are wholly unsubstantiated and are taken out of context. From our review of the record, we conclude that the court correctly described the conduct of the parties and their counsel in the proceedings below as lacking in communication and cooperation. The record clearly indicates that the court was cognizant of the issues before it, fairly determined the motions before it, and exerted the appropriate measures to control the parties and to allow the case to proceed. The record also clearly shows that defendant entered into the settlement agreement "with full knowledge of all the facts, with ample time and opportunity for investigation, consideration, consultation, and reflection." *Apter, supra*. Finding no duress, we conclude that the trial court properly exercised its discretion in denying defendant's motions.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Stephen L. Borrello